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AMENDMENTS TO LB 572

(Amendments to Standing Committee amendments, AM1149)

1 1. Insert the following new section:

2 "Sec. 8. Section 69-2702, Revised Statutes Supplement,
3 2002, is amended to read:

4 69-2702. For purposes of sections 69-2702 and 69-2703:

5 (1) Adjusted for inflation means increased in accordance
6 with the formula for inflation adjustment set forth in Exhibit C to
7 the Master Settlement Agreement;

8 (2) Affiliate means a person that directly or indirectly
9 owns or controls, is owned or controlled by, or is under common
10 ownership or control with, another person. Solely for purposes of
11 this subdivision, the terms owns, is owned, and ownership means
12 ownership of an equity interest, or the equivalent thereof, of ten
13 percent or more, and the term person means an individual,
14 partnership, committee, association, corporation, or any other
15 organization or group of persons;

16 (3) Allocable share means allocable share as that term is
17 defined in the Master Settlement Agreement;

18 (4) Cigarette means any product that contains nicotine,
19 is intended to be burned or heated under ordinary conditions of
20 use, and consists of or contains (a) any roll of tobacco wrapped in
21 paper or in any substance not containing tobacco; (b) tobacco, in
22 any form, that is functional in the product, which, because of its
23 appearance, the type of tobacco used in the filler, or its

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1 packaging and labeling, is likely to be offered to, or purchased
2 by, consumers as a cigarette; or (c) any roll of tobacco wrapped in
3 any substance containing tobacco which, because of its appearance,
4 the type of tobacco used in the filler, or its packaging and
5 labeling, is likely to be offered to, or purchased by, consumers as
6 a cigarette described in ~~clause~~ subdivision (a) of this
7 subdivision. The term cigarette includes roll-your-own tobacco
8 (i.e., any tobacco which, because of its appearance, type,
9 packaging, or labeling is suitable for use and likely to be offered
10 to, or purchased by, consumers as tobacco for making cigarettes).
11 For purposes of this definition, ~~nine hundredths~~ nine-hundredths of
12 an ounce of roll-your-own tobacco shall constitute one individual
13 cigarette;

14 (5) Master Settlement Agreement means the settlement
15 agreement entered into on November 23, 1998, between the state and
16 specific United States tobacco product manufacturers and related
17 documents to such agreement;

18 (6) Qualified escrow fund means an escrow arrangement
19 with a federally or state-chartered financial institution having no
20 affiliation with any tobacco product manufacturer and having assets
21 of at least one billion dollars where such arrangement requires
22 that such financial institution hold the escrowed funds' principal
23 for the benefit of releasing parties and prohibits the tobacco
24 product manufacturer that places such funds into escrow from using,
25 accessing, or directing the use of the funds' principal except as
26 consistent with subdivision (2) (b) of section 69-2703;

27 (7) Released claims means released claims as that term is

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1 defined in the Master Settlement Agreement;

2 (8) Releasing parties means releasing parties as that
3 term is defined in the Master Settlement Agreement;

4 (9) Tobacco product manufacturer means an entity that
5 after April 29, 1999, directly and not exclusively through any
6 affiliate:

7 (a) Manufactures cigarettes anywhere that such
8 manufacturer intends to be sold in the United States, including
9 cigarettes intended to be sold in the United States through an
10 importer (except when such importer is an original participating
11 manufacturer (as that term is defined in the Master Settlement
12 Agreement) that will be responsible for the payments under the
13 Master Settlement Agreement with respect to such cigarettes as a
14 result of the provisions of subsection II(mm) of the Master
15 Settlement Agreement and that pays the taxes specified in
16 subsection II(z) of the Master Settlement Agreement, and provided
17 that the manufacturer of such cigarettes does not market or
18 advertise such cigarettes in the United States);

19 (b) Is the first purchaser anywhere for resale in the
20 United States of cigarettes manufactured anywhere that the
21 manufacturer does not intend to be sold in the United States; or

22 (c) Becomes a successor of an entity described in
23 subdivision (9)(a) or (9)(b) of this section.

24 The term tobacco product manufacturer does not include an
25 affiliate of a tobacco product manufacturer unless such affiliate
26 itself falls within any of subdivisions (9)(a) through (9)(c) of
27 this section; and

1 (10) Units sold means the number of individual cigarettes
2 sold in the state by the applicable tobacco product manufacturer,
3 whether directly or through a distributor, retailer, or similar
4 intermediary or intermediaries, during the year in question, as
5 measured by excise taxes collected by the state on packs or
6 roll-your-own tobacco containers. ~~bearing the excise tax stamp of~~
7 ~~the state.~~ The Tax Commissioner shall adopt and promulgate such
8 rules and regulations as are necessary to ascertain the amount of
9 state excise tax paid on the cigarettes of such tobacco product
10 manufacturer for each year.".

11 2. On page 4, strike lines 2 through 6 and insert the
12 following new subdivision:

13 "(ii) That such non-participating manufacturer has
14 established and continues to maintain a qualified escrow fund
15 pursuant to a qualified escrow agreement that has been reviewed and
16 approved by the Attorney General or submits a copy of such
17 agreement for review by the Attorney General;".

18 3. On page 12, strike beginning with "Before" in line 2
19 through "(2)" in line 27 and insert "Before any tobacco product
20 manufacturer may be removed from the directory, the Tax
21 Commissioner shall provide the tobacco product manufacturer thirty
22 days' notice of the intended action and shall post the notice on
23 the directory. The tobacco product manufacturer shall have thirty
24 days to come into compliance with sections 69-2701 to 69-2703 and
25 sections 1 to 7 of this act or in the alternative, secure a
26 temporary injunction against removal in the district court of
27 Lancaster County. For the purposes of the temporary injunction

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1 sought pursuant to this subsection, loss of the ability to sell
2 tobacco products as a result of removal from the directory shall
3 constitute irreparable harm. If after thirty days the tobacco
4 product manufacturer remains in noncompliance and has not obtained
5 a temporary injunction pursuant to this subsection, the tobacco
6 product manufacturer shall be removed from the directory.

7 (2) If the Tax Commissioner determines that a tobacco
8 product manufacturer shall not be included in the directory, such
9 manufacturer may request a contested case before the Tax
10 Commissioner under the Administrative Procedure Act. The Tax
11 Commissioner shall notify the tobacco product manufacturer in
12 writing of the determination not to include it in the directory. A
13 request for hearing shall be made within thirty calendar days after
14 the date of the determination that the manufacturer shall not be
15 included in the directory and shall contain the evidence supporting
16 the manufacturer's compliance with section 69-2703 and sections 1
17 to 7 of this act. The hearing shall be held within sixty days
18 after the request. At the hearing, the Tax Commissioner shall
19 determine whether the tobacco product manufacturer is in compliance
20 with section 69-2703 and sections 1 to 7 of this act and whether
21 the manufacturer should be listed in the directory. A final
22 decision shall be rendered within thirty days after the hearing.
23 Any decision of the Tax Commissioner may be appealed under the
24 Administrative Procedure Act.

25 (3)".

26 4. On page 13, line 9, strike "(3)" and insert "(4)".

27 5. Renumber the remaining sections and correct the

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- 1 repealer and internal references accordingly.